Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	CC Docket No. 96-146
	)	
Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996	)	
	)	
In the Matter of	)	CC Docket No. 93-22
	)	
Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act	)	

REPLY COMMENTS OF HFT, INC., LO-AD COMMUNICATIONS, CORP. AND AMERICAN INTERNATIONAL COMMUNICATIONS, INC.

By Their Attorneys

JOSEPH G. DICKS, ESQ. (127362)
DICKS & DUNNING
750 "B" STREET, SUITE 2310
SAN DIEGO, CA 92101
(619) 685-6800

I. LONG DISTANCE COMPANIES ARE POISED TO EXPLOIT CONSUMERS UNDER THE PROPOSED REDEFINITION OF PAY-PER-CALL

A number of organizations who stand to profit handsomely by forcing all information services to the 900 dialing pattern have filed comments in support of the FCC's proposed rule change. These would include comments by MCI (see page 6 of that comment) and AT&T (see section II of that comment).[1]

The organizations who support the FCC's proposed expanded redefinition of pay-per-call have much to gain by the new definition. These organizations look forward to selling (and reselling due to the lack of 900 portability) their 900 services and charging exorbitant prices for transmitting these services over their networks. The net result, should these organizations have their way, will be that the consumers looking to afford themselves the opportunity to utilize these services will suffer by having to pay a premium equal to two, three and sometimes four or more times the basic charge for carrying the call on a regular long distance or international phone line. Consumers are going to be left without a choice regarding how they access these services. When you eliminate choices you discourage competition and increase the

---

[1]The comments of the Alliance of Young Families also supported whatever Draconian measures it believed was necessary to eliminate all services which involved content matter which its members found objectionable. Although described as an "association of families residing in California, Nevada and Arizona", these commentors have learned that there is no such organization by that name in those states. These commentors would request the FCC to investigate for itself the validity of this organization insofar as it appears to be a front for an organization or group of organizations seeking to surreptitiously and anonymously promote its own agenda.

incentive to engage in predatory pricing practices. The FCC should not be tempted by the opportunistic purveyors of 900 network services who, under the heading of "consumer protection" are really attempting to set up a protected niche market where those who wish to participate as consumers must pay non-competitive and outlandish rates.

II. THE PROPOSED REDEFINITION OF PAY-PER-CALL DOES NOT PROMOTE THE LEGITIMATE GOALS ESTABLISHED BY CONGRESS

A close examination of all of the comments filed with the FCC reveals that the central goal in the protection of the consumer is to avoid the imposition of unexpectedly high charges for the various telecommunications services available. In fact, the vast majority of the comments center around the following issues:

1. Consumers being charged for dialing 800 numbers;
2. Consumers being duped into illegitimate pre-subscription agreements; and
3. Consumers being charged premium, albeit tariffed rates for what the consumer believed was a normal domestic or international toll call.

Few, if any, "horror stories" have arisen out of a subscriber being charged for an information service when that charge did not exceed the reasonable and customary charge for an ordinary domestic or international long distance call. This is precisely why Congress made the selective changes as identified in the FCC's Notice of Proposed Rule Changes. The changes adopted and passed by Congress were tailored to respond to the concerns

identified in nos. 1, 2 and 3 above because this is where the abuses were concentrated. If Congress believed it was faced with a crisis surrounding the provision of information service calls at reasonable and customary long distance rates, it would have addressed that in its redefinition of pay-per-call. It did not. It is arrogant, at best, to presume that Congress simply overlooked this issue and that the FCC and some of the commentors have picked up on what could then only be described as a "obvious omission" by Congress. One need only review the comments of the National Association of Attorneys General, the Honorable Bart Gordon and the Public Utilities Commission of the State of California to see that the redefinition of pay-per-call received no support at all.[2]

While most of the proposed rule changes address legitimate and well-documented abuses, no individual or entity in any of the comments have cited any support for the proposition that consumers are somehow mislead into incurring unexpected and outrageous charges for direct dialing a domestic or international long distance number. The proposed redefinition purports to address a concern that has not been articulated by Congress or any other objective source. Until Congress determines that the phantom

---

[2]The State of California Public Utilities Commission thought that the redefinition of pay-per-call was worthy of support **only** if it would "prevent customer abuse and close loop holes and otherwise allow carriers and other entities to reap **illicit profits** from **sharp practices.**" (Emphasis added.) Nowhere has Congress even suggested that profits could be described as "illicit" where only reasonable and customary long distance or international rates are being charged. Likewise, Congress has given no indication that it believes charging reasonable and customary long distance rates constitutes a "sharp practice".

abuse actually exists as opposed to existing only in the minds of those ulteriorly motivated, and until such time as Congress deems it appropriate to pass legislation in that regard, the FCC has no obligation and, in fact, no right to relegislate in that area.

III. THE PROPOSED REDEFINITION OF PAY-PER-CALL RESTRICTS NETWORK EXPANSION AND INHIBITS NETWORK GROWTH AND RESULTING ECONOMIES OF SCALE

One of the main objectives behind telecommunication deregulation was to maximize telecommunications network utilization to reduce, in the mid and long term, access rates. The commission agreements which the FCC seeks to prohibit encourages traffic and resulting network use which results in lower overall charges to consumers, especially in extremely underutilized rural areas. AT&T complains that many rural area LEC's charge exorbitant rates to terminate AT&T's incoming calls. It uses this as its justification to argue to the FCC that its TSAA arrangements should be exempted from the new pay-per-call definition. At the same time, AT&T argues that the similar commission arrangements between the LEC's and providers of new telecommunication services contribute to the LEC's increased rates. AT&T's reasoning is clouded by its ulterior economic motive. As long as the LEC's are stymied in their efforts to expand their networks' usage and thus reap the benefits of economies of scale, they must continue to charge premium prices to cover the cost of the overhead incurred in providing these services to their customers. As long as those rates stay high, AT&T can justify its TSAA arrangements which it uses as a successful

marketing ploy to encourage its users to purchase AT&T's 800 and outbound services.

AT&T's TSAA agreements are "choking out" LEC's who are competing for the business of terminating local and long distance calls. If the LEC's cannot use commissions to increase their volume, they cannot fairly compete with AT&T on the same playing field. If AT&T's true concern is that many LEC's are setting their terminating access fees too high, then they should propose regulations regarding how these rates should be set, not regulations that inhibit network utilization and growth.

The FCC should back Congress in its attempts to protect the consumer while, at the same time, promoting market expansion and network utilization to help bring down the costs of network access to all individuals in every community, including those in rural or outlying areas. The new pay-per-call definition stymies that growth and is contrary to the entire concept of equal access for all consumers.

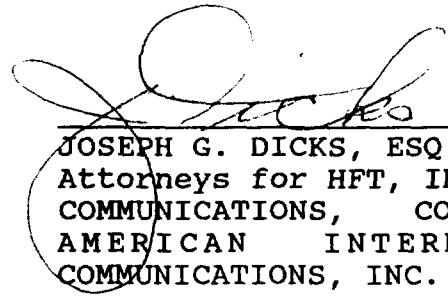
IV. ALL NON-900 NUMBERS SHOULD NOT BE RELEGATED TO PRE-SUBSCRIPTION

Pacific Bell promotes the idea that if a call is non-900, it should be pre-subscription. This goes beyond even what the FCC has proposed in its recent notice. Remember, Pacific Bell does not address what sense pre-subscription makes in an instance where the subscriber is not being charged more than normal long distance rates for the call. In fact, some state organizations which provide lottery information on 900 lines at normal long distance

rate are exempted from the requirement that a preamble regarding the charge for the call be included in the message. Apparently, even under these circumstances, Congress and the FCC understand that where the consumer is under the reasonable expectation that he or she is being charged ordinary long distance rates for the call, the added protective devices that are justified for calls where the consumer may be laboring under false expectations are simply superfluous and unnecessary.

DATED: September 13, 1996

DICKS & DUNNING



JOSEPH G. DICKS, ESQ.
Attorneys for HFT, INC., LO-AD COMMUNICATIONS, CORP. and AMERICAN INTERNATIONAL COMMUNICATIONS, INC.

hft\reply.com